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IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

EXAMINER

Angela M. Lie

| ART UNIT | PAPER |
|----------|----------|
| 2163 | 20071107 |

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The Supplemental Examiner's Answer with corrected c(1) i.e. Real Party of Interest, is attached to this correspondence.

Angela M Lie



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/798,920
Filing Date: March 11, 2004
Appellant(s): CHESSELL ET AL.

Theodore D. Fay III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 7, 2007 appealing from the
Office action mailed on March 2, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0194179

Siefert

12-2002

6738775

Asherman

5-2004

| | | |
|---------|----------|--------|
| 5951695 | Kolovson | 9-1999 |
| 6385641 | Jiang | 5-2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Objections

1. Claims 1 and 17 are objected to because of the following informalities:
2. In the last paragraph of claims 1 and 17, the applicant recites determination if the intersection of the selected set and profile set is empty, this in fact does not seem to be proper, because if there is no result there would be no intersection. Therefore for the clarity purposes it is suggested to state determining if the intersection exists instead of determining if the intersection is empty.
3. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1, 17, 33 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Siefert (US Publication No. 2002/0194179).**

As to claims 1, 17, 33 and 49, Siefert discloses a method for extracting data from data store comprising a first set of one or more data items, the method comprising

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the steps of: creating a selected set comprising a second set of one or more data items in accordance with a selection rule (paragraph 62, wherein the search criteria are considered to form a set according to the selection rule); creating a profile of the data store (paragraph 58, wherein profile describes resources, and set of those descriptive terms form a set), the profile comprising a profile rule defining a profile set (wherein the rule is the level of descriptiveness), wherein the profile set comprises a third set of one or more data items in accordance with the profile rule (i.e. placing words in the set that best describe a repository); responsive to a determination that an intersection of the selected set and the profile set is non-empty, extracting a fourth set of one or more data items from the data store in accordance with the selection rule (paragraph 53, i.e. relevant results); and responsive to a determination that an intersection of the selected set and the profile set is empty, providing an indication that the data store does not include data items in the selected set (if there is no intersection, there is no match to the searching criteria (set established based in the selection rule)).

As to claims 8, 24, 40 and 56, Siefert discloses a method wherein the data store includes a relational database (paragraph 14).

As to claims 9, 25, 41 and 57, Siefert discloses a method wherein the data store includes a hierarchical database (Figure 1A i.e. profile and resource relationship).

As to claims 10, 26, 42 and 58, Siefert discloses a method wherein the data store includes an object oriented database (paragraph 58).

As to claims 11, 27, 43 and 59, Siefert discloses a method wherein the data store includes an input/output software library (Figure 1B).

As to claims 12, 28, 44 and 60, Siefert discloses a method wherein the data store includes a disk storage device (paragraph #317).

As to claims 13, 29, 45 and 61, Siefert discloses a method wherein the data store includes a plurality of disk storage devices (paragraph #317).

As to claims 15, 31, 47 and 63, Siefert discloses a method wherein the data store includes a random access memory (Figure 1D, wherein server machine comprises RAM memory).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 2-7, 18-23, 34-39 and 50-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of Asherman (US Patent 6738775).** Siefert teaches all the limitations disclosed in claims 1, 17, 33 and 49, however he does not explicitly teach that the first data set comprises numeric, string, date, graphical, sound and video data. Asherman teaches a database communication system wherein the database supports all of the above listed file types (column 7, lines 61 and 62; column 11, lines 24-29). It would have been obvious to one of the ordinary skill in the art during the time the invention was made to store any or all of the above listed file formats in the database, because all those file type are very well

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known in the art and there often is a need for storing those file in well organized data set (database).

8. **Claims 14, 30, 46 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of**

Kolovson (US Patent 5951695). Siefert teaches all the limitations disclosed in claims 13, 29, 45 and 61 respectively, except for the plurality of disk storage devices including a redundant array of independent disks. Kolovson teaches a database set up into a Redundant Array of Independent disks (column 4, lines 38-47). It would have been obvious to one of the ordinary skill in the art during the time the invention was made, to use RAID set up for the database in order to minimize possible loss of the important data or/and increase the speed of the access time (wherein the specific advantages depend on specific RAID type).

Claims 16, 32, 48 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of Jiang et al (US Patent No. 6385641). Siefert discloses all the limitations disclosed in claims 1, 17, 33 and 49 respectively, however he does not explicitly teach that the creating profile step takes place when the data store is idle. Jinag teaches prefetching data when network link and files are in idle state (column 1, lines 47-55). It would have been obvious to one of the ordinary skill in the art during the time the invention was made to create profile while the files are in idle state similarly to the teaching by Jinag, because this would allow to utilize the stored file without additional burden on those who attempt to access files, i.e. if more than one task would be performed at the same time, this

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could slow down all the users from accessing a file and in some situation could lead to overload.

(10) Response to Argument

1. I(Issue): did the Examiner err in concluding that claims 1, 8-13, 15, 17, 24-29, 31, 33, 40-44, 47, 49, 61 and 63 were anticipated under 35 U.S.C 102(b) as being anticipated by Siefert (US Publication No. 2002/0194179).

- *In the first argument, the appellant addressed claim objection directed toward claims 1 and 17 by stating “ the objection is erroneous because the claim goes on to state that the method provides an indication that the data store does not include data items in the selected set. Therefore, a positive result exists, namely that the intersection is empty, and a positive action is taken in response to this result”. (Page 10)*

The Appellant's first argument has not been found persuasive. The Examiner would like to note that the source of the objection is not derived from the claimed limitation, “empty set”, but the phrase that there is an empty intersection. It is well known in the art, that when a person attempts to obtain a result by intersecting two sets (for instance, searching for same elements contained in both sets or matching profile with the respective resource), the intersection of those two sets is a clear indication that there is at least one element that those two sets share in common. Consequently, if those two sets do not comprise a common element, the intersection cannot be made, instead commonly spoken, the intersection

does not exist. Stating that there is an empty intersection is against common mathematical standards, since the intersection is not described by two contours of the sets encircling each other, instead it is defined by the elements that those two sets share in common, or two element that correspond to each other.

- *In the second argument in general, the Appellant asserts, that "Seifert does not teach the feature of, "creating a profile of the data store, the profile comprising a profile rule defining a profile set, wherein the profile set comprises a third set of one or more data items in accordance with the profile rule" and Seifert also does not teach the feature of, "responsive to a determination that the intersection of the selected set and the profile set is empty, providing an indication that the data store not include data items in the selected set". (Page 11). Further on page 12, the Appellant particularly addresses the step of " creating a profile of the data store, the profile comprising a profile rule defining a profile set, wherein the profile set comprises a third set of one or more data items in accordance with the profile rule", wherein the Appellant alleges that rule can not be defined by the "level of descriptiveness" and further the Appellant also does not agree with the Examiner that Seifert teaches a "level of descriptiveness". (Pages 12 and 13)*

The Appellant's second argument has not been found persuasive. The Examiner maintains that Seifert indirectly teaches the "level of descriptiveness",

by disclosing that the profile of the resource is represented by a descriptive title and resource location information (paragraphs 58 and 99). Furthermore, the profile also comprises description of the data contained in the corresponding resource. Note that the requirement for the specific data being present to create a profile is considered a "level of descriptiveness" since every single of those pieces of data (i.e. title, location a detailed description) is required to form a profile. Consequently the above-defined rule/requirement is used to create profiles (paragraph 58, i.e. profile set, wherein the collection of profiles comprises at least two profiles).

Moreover the Examiner would also like to note that the Appellant does not define the phrase "profile rule" instead multiple examples are presented. Therefore the Examiner is entitled to presume the broadest, reasonable interpretation.

- *In the third argument, the Appellant asserts that Seifert also does not teach the feature of, "responsive to a determination that the intersection of the selected set and the profile set is empty, providing an indication that the data store does not include data items in the selected set". (Page 13)*

The Examiner does not find the third argument persuasive. As addressed above (response to the first argument), the "empty intersection" i.e. non-existing intersection is an indication that there are no results available, in other words if there is no match between the submitted keywords and the searched profiles

(paragraphs 59-62), at the very least lack of returned result would be also an indication of an "empty intersection". The Appellant is not specific of what type of indication is used, therefore again term "indication" is allotted the broadest, reasonable interpretation, wherein an "indication" is just a sign which allows a user to realize what is the result of the most recent action, for instance comparison or search.

2. I (Issue): did the Examiner err in concluding that claims 2-7, 18-23, 34-39 and 50-55 stand rejected under 35 U.S.C 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of Asherman (US Patent No. 6738775).

- *In the first argument, the Appellant states, " Asherman does not teach or suggest the claimed featured of, "creating a profile of data store, the profile comprising a profile rule defining a profile set, wherein the profile set comprises a third set of one or more data items in accordance with the profile rule".(Page 14)*

The Examiner agrees that Asherman does not teach the above-disclosed limitations, however it is important to note that this is obviousness type of rejection, and Asherman's teaching is used as a secondary prior art.

Consequently, the above-disclosed limitations are taught by Siefert (primary prior art), and therefore Asherman does not need to teach those features.

- *In the second argument the Appellant alleges, " the Examiner failed to state a prima facie obviousness rejection against claim 2*

because the Examiner failed to state a proper reason to combine the references under the standards of KSR Int'l". (Page 15)

The Appellant's second argument has not been found persuasive. First of all, the KSR Int'l ruling does not require an explicit motivation as TSM (test, suggestion and motivation). Second of all, the Appellant in his argument omitted the most important part of motivation, mainly " need for storing those files in well organized data set". The Examiner maintains that having organized structure (not addressed by the Appellant) is a useful feature. Consequently, even assuming that KSR Int'l standards would require an explicit motivation, the motivation is still present in the discussed claim.

- *In the third argument the Appellant states, "Asherman is not in the same field of endeavor ... and Asherman is not reasonably pertinent to the particular problem with which Applicants were concerned ... Asherman is in the field of remote database communication. In contrast claim 2 is in the field of searching data stores. The two fields are distinct from each other because communication with a database is not the same as techniques for searching information within a database". (Page 16)*

The third argument has not been found persuasive. Even though Asherman teach database communication, this teaching is still considered an analogous art with respect to the limitation it relates to. In particular, Siefert does not teach first data set comprising numeric, string ... data, and Asherman cures this deficiency

by teaching missing limitation. It is important to note however, that this limitation does not concern retrieving data from a data store at all; instead it describes what kind of files can be stored in the data store. Consequently, those two prior arts are considered analogous since they both deal with accessing/searching files). Furthermore, it is important to note that the formats of the files listed by the Appellant are well in the art.

3. I (Issue): did the Examiner err in concluding that claims 2-7, 18-23, 34-39 and 50-55 stand rejected under 35 U.S.C 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of Kolovson (US Patent No. 5951695).

- *In the first argument, the Appellant states, "Kolovson does not teach or suggest the claimed featured of, "creating a profile of data store, the profile comprising a profile rule defining a profile set, wherein the profile set comprises a third set of one or more data items in accordance with the profile rule". (Page 18)*

The Examiner agrees that Kolovson does not teach the above-disclosed limitations, however it is important to note that this is obviousness type of rejection, and Kolovson's teaching is used as a secondary prior art.

Consequently, the above-disclosed limitations are taught by Siefert (primary prior art), and therefore Kolovson does not need to teach those features.

- *In the second argument, the Appellant alleges, "Kolovson is not reasonably pertinent to the particular problem with which Applicants were concerned". (Page 19)*

The Examiner disagrees with the second argument. As stated by the Appellant, Kolovson's art is directed to a database crash recovery, and the Applicant's invention concerns extracting information from selected sets of data within a data store. The Examiner maintains however that Kolovson's teaching is an analogous art because at the very least a database crash recovery is associated with extracting information from selected sets, in order to back it up or to access pieces of data that might be lost.

4. I (Issue): did the Examiner err in concluding that claims 2-7, 18-23, 34-39 and 50-55 stand rejected under 35 U.S.C 103(a) as being unpatentable over Siefert (US Publication No. 2002/0194179) in the view of Jiang et al (US Patent No. 6385641).

- *In the first argument, the Appellant states, "Jiang does not teach or suggest the claimed featured of, "creating a profile of data store, the profile comprising a profile rule defining a profile set, wherein the profile set comprises a third set of one or more data items in accordance with the profile rule". (Page 21)*

The Examiner agrees that Jiang does not teach the above-disclosed limitations, however it is important to note that this is obviousness type of rejection, and Jiang's teaching is used as a secondary prior art. Consequently,

the above-disclosed limitations are taught by Siefert (primary prior art), and therefore Jiang does not need to teach those features:

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Angela M Lie

Conferees:

Angela M Lie (Examiner, AU 2163)

Don Wong (SPE, AU 2163)

Tim Vo (SPE, AU 2168)



DON WONG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100



TIM VO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100